

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

CALIFORNIA STATE EMPLOYEES
ASSOCIATION,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
MOTOR VEHICLES),

Respondent.

Case No. LA-CE-607-S

PERB Decision No. 1558-S

November 21, 2003

Appearance: Fernando Acosta, Attorney, for California State Employees Association.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (Board) on appeal by the California State Employees Association (CSEA) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleged that the State of California (Department of Motor Vehicles) (DMV) violated the Ralph C. Dills Act (Dills Act)¹ by unilaterally implementing the use of an existing security monitoring system as a timekeeping device to monitor employee attendance. The Board agent dismissed the charge because the DMV's security monitoring system did not impact the scope of representation, and was therefore not subject to bargaining.

¹The Dills Act is codified at Government Code section 3512 et seq.

After reviewing the entire record in this case, including the warning and dismissal letters and CSEA's appeal, the Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-607-S is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

Dismissal Letter

June 25, 2003

Fernando Acosta, Attorney
California State Employees Association
3055 Wilshire Boulevard, Suite 520
Los Angeles, CA 90010

Re: California State Employees Association v. State of California (Department of Motor Vehicles)
Unfair Practice Charge No. LA-CE-607-S
DISMISSAL LETTER

Dear Mr. Acosta:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on . The California State Employees Association alleges that the State of California (Department of Motor Vehicles) (Department of Motor Vehicles) violated the Ralph C. Dills Act (Dills Act)¹ by unilaterally implementing the use of an existing security monitoring system as a timekeeping device to monitor employee attendance.

I indicated in the attached letter dated June 9, 2003, that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that unless the charge was amended to state a prima facie case or was withdrawn prior to June 18, 2003, the charge would be dismissed. An amended charge was filed on June 17, 2003.

The charge alleges that DMV contracts with Allen Alarm Systems to provide monitoring and maintenance services for burglar and fire alarm systems at various DMV field offices. Under this contract, Allen Alarm Systems provides DMV with monthly activity reports of openings/closings, day and time of activity, authorized individual, office name and account number, and type of system being monitored.

On November 1, 2000, the DMV assigned Steven Wheeler to work as a janitor at the Lincoln Park DMV field office. Mr. Wheeler's work shift ends at 10:30 p.m., at which time he is required to sign out on a DMV log sheet and activate the office security system.

¹ The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

On November 26, 2002, the DMV served Mr. Wheeler with a notice of adverse action dismissing him from employment. The notice alleged that based on the alarm system reports, Mr. Wheeler had activated the security system and left the Lincoln Park field office before 10:30 p.m. on 28 different occasions. This information contradicted the time Mr. Wheeler signed out on the DMV log sheet.

On May 7, 2003, you sent a letter to DMV requesting specific information concerning the alarm system contract and the operation of the alarm system.

As amended, the charge provides the following additional information. Between November 1, 2000 and November 25, 2002, the DMV did not advise or warn Mr. Wheeler that his monthly timesheet would be reconciled with the alarm system reports and that a discrepancy could subject Mr. Wheeler to discipline. On June 10, 2003, the State Personnel Board issued a decision modifying Mr. Wheeler's dismissal to a four-month suspension. Finally, the amended charge alleges that the DMV responded to your May 7, 2003 information request on June 9, 2003, stating that the DMV was compiling the requested information.

As previously stated in the attached letter, unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Union High School District (1982) PERB Decision No. 196.) A check-in/check-out system implemented for security purposes is not a negotiable subject unless there is an impact on the length of the workday or duty-free time. (State of California (Department of Youth Authority) (1998) PERB Decision No. 1293-S.)

The amended charge does not provide facts which demonstrate a unilateral change in a negotiable subject. The charge does not demonstrate an impact on the workday, only the application of discipline for failure to adhere to attendance requirements. Accordingly, this allegation does not state a prima facie violation of the Dills Act and is dismissed.

Further, the amended charge does not provide facts which overcome the deficiencies described in the attached letter concerning the information request. Since the check-in/check-out system is not negotiable, the charge does not demonstrate how the requested information is necessary and relevant to CSEA's right to represent bargaining unit members. Thus, this allegation is also dismissed.

Right to Appeal

Pursuant to PERB Regulations,² you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of

LA-CE-607-S
June 25, 2003
Page 4

each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By _____
Robin W. Wesley
Regional Attorney

Attachment

cc: Linda Nelson

Warning Letter

June 9, 2003

Fernando Acosta, Attorney
California State Employees Association
3055 Wilshire Boulevard, Suite 520
Los Angeles, CA 90010

Re: California State Employees Association v. State of California (Department of Motor Vehicles)
Unfair Practice Charge No. LA-CE-607-S
WARNING LETTER

Dear Mr. Acosta:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on . The California State Employees Association alleges that the State of California (Department of Motor Vehicles) (Department of Motor Vehicles) violated the Ralph C. Dills Act (Dills Act)¹ by unilaterally implementing the use of an existing security monitoring system as a timekeeping device to monitor employee attendance.

DMV maintains and operates several field offices throughout the State, including a field office in Lincoln Park. On September 1, 2001, DMV entered into an agreement with Allen Alarm Systems to provide monitoring and maintenance services for existing burglar and fire alarm systems at various DMV field offices, including Lincoln Park. Under the agreement, Allen Alarm Systems provides DMV with monthly activity reports of openings/closings, day and time of activity, authorized individual, office name and account number, and type of system being monitored.

Steven Wheeler is employed as a custodian by DMV at its Lincoln Park field office. Mr. Wheeler's work shift normally ends at 10:30 p.m., at which time he is required to sign out on a DMV log sheet. Mr. Wheeler is also required to activate, by way of an assigned access code, the Lincoln Park field office alarm system at the end of his work shift.

On November 26, 2002, DMV served Mr. Wheeler with a notice of adverse action dismissing him from employment. The Notice alleged that based on the alarm system reports received from Allen Alarm Systems, Mr. Wheeler had activated the security system and left the Lincoln Park field office on 28 different occasions before 10:30 p.m. The alarm system reports contradict Mr. Wheeler's representations on the sign out log sheet that he left the Lincoln Park field office at 10:30 p.m.

¹ The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

On December 3, 2002, Mr. Wheeler contacted CSEA seeking assistance in filing a notice of appeal with the State Personnel Board. This was the first time that CSEA learned that DMV was using the information obtained from the alarm system reports as a basis to discipline DMV employees.

On May 7, 2003, CSEA Attorney Fernando Acosta sent a letter to DMV Labor Relations Officer Bruce Arbuckle requesting the following information:

1. The date when the current alarm system(s) was installed at the DMV Lincoln Park field office. (As used herein and throughout, "alarm system" includes security and monitoring systems.)
2. Any and all past and current agreement or contract entered into between the DMV and the Allen Alarm Systems, Incorporated regarding, but not limited to the sale, installation, maintenance, or service of the alarm system(s) at the DMV Lincoln Park field office.
3. Any and all materials, brochures, or description of any kind of the current DMV alarm system operating at the DMV Lincoln Park field office.
4. Any and all written notice(s) by the DMV or its authorized agent to CSEA informing CSEA that DMV would rely on the alarm system at the DMV Lincoln Park field office to monitor DMV employees' attendance.

Based on information stated above, the charge does not state a prima facie case.

The charge alleges that the DMV unilaterally implemented a timekeeping device, by utilizing an existing security monitoring system, to monitor employee attendance and subject employees to discipline.

In determining whether a party has violated the Dills Act section 3519(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Union High School District (1982) PERB Decision No. 196.) The Board has held that a check-in/check-out system implemented for security purposes is not within the mandatory

scope of bargaining unless there is an impact on the length of the workday or duty-free time. (State of California (Department of Youth Authority) (1998) PERB Decision No. 1293-S.)

The charge alleges that Mr. Wheeler is required to sign a log out sheet at the end of his work shift and activate the alarm system. When Mr. Wheeler activates the alarm system, a report is generated noting the time and individual initiating the system activation.

These facts suggest that Mr. Wheeler is already participating in a check-in/check-out system, both by signing the log and by activating the security system. As noted above, a check-in/check-out system is not negotiable absent a showing of some impact on the workday. Charging party contends that any discipline derived from the alarm monitoring system represents a unilateral change in policy. The facts do not demonstrate a change in policy, only the application of discipline for failure to adhere to attendance requirements. Thus, this allegation does not state a prima facie case and must be dismissed.

The charge also alleges that the DMV failed or refused to provide necessary and relevant information.

An exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty of representation. (Stockton Unified School District (1980) PERB Decision No. 143). PERB uses a liberal standard, similar to a discovery-type standard, to determine relevance of the requested information. (California State University (1986) PERB Decision No. 613-H.) Failure to provide such information is a per se violation of the duty to bargain in good faith.

CSEA requested information concerning the contract to monitor DMV field office security and fire alarm systems. The Union also requested information describing the operation of the alarm system. Finally, CSEA sought information on whether DMV notified CSEA that it would review the alarm system reports to determine any discrepancies in employee attendance.

In light of the above discussion that the check-in/check-out system is not negotiable, the charge does not provide facts which demonstrate how or in what manner the requested information is necessary and relevant to CSEA's right to represent bargaining unit members. Accordingly, this allegation also fails to state a prima facie case and must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an

LA-CE-607-S

June 9, 2003

Page 4

amended charge or withdrawal from you before June 18, 2003, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robin W. Wesley
Regional Attorney